INDEX OF AUTHORITIES CITED—

SUPREME COURT OF THE UNITED STATES.

J. M. THOMPSON, Master and Claimant of the Steamship WESTMEATH, her engines, etc., Claimant-Petitioner,

AGAINST

PETER LUCAS and GUSTAV BLIXT, Libelants-Respondents.

SIR:

PLEASE TAKE NOTICE that the annexed petition for a Writ of Certiorari to the United States Circuit Court of Appeals, for the Second Circuit, will be submitted to the Supreme Court of the United States on the opening of Court on the Second day of June, 1919, or as soon thereafter as counsel can be heard.

Dated, New York, May 17, 1919.

KIRLIN, WOOLSEY & HICKOX,
Proctors for the Petitioner.

To SILAS BLAKE AXTELL, ESQ.,
Proctor for Libelants-Respondents.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1918.

J. M. THOMPSON, Master and Claimant of the Steamship WESTMEATH, her engines, etc., Claimant-Petitioner,

AGAINST

PETER LUCAS and GUSTAV BLIXT, Libelants-Respondents.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, J. M. Thompson, claimant of the Steamship *Westmeath,* her engines, etc., respectfully shows unto this court as follows:

FIRST: Your petitioner, the claimant, at all the times herein mentioned was the master of the British Steamship *Westmeath.* The libelants-respondents were foreign subjects and were members of the crew of the Steamship *Westmeath.*

SECOND: The libel of Peter Lucas and Gustav Blixt which was filed April 14, 1916, alleges that the libelants, firemen on the British Steamship *Westmeath*, were hired by the master for and during a voyage from Australian ports to New York at certain rates of wages.

That thereafter the vessel arrived at New York, delivered cargo, and on April 8th the libelant Blixt and on April 10th the libelant Lucas made a personal demand upon the master of the vessel for one-half wages then owing them. The demands were refused by the master and that under and by virtue of Section 4530 of the Revised Statutes of the United States the libelants became and were entitled to their discharge and to the full amount of their wages then due and owing.

The libel also demands the value of the libelants' clothing and effects.

The answer of the claimant admits that the libelants signed on the articles of the *Westmeath* and that upon arrival at New York the vessel discharged and loaded cargo. The other material allegations of the libel were denied.

As an affirmative defense it was alleged in the Answer that the *Westmeath* was a British Steamship and that the contract of service entered into between the libelants and the ship was governed by the laws of Great Britain and Ireland and that by virtue of that law the libelants were not entitled to bring a claim for wages.

It is also alleged in the Answer that the contract entered into by these libelants was for a voyage not to exceed one year beginning on August 4th, 1915, and that on April 9th, 1916, the libelants deserted the steamship

Westmeath and thereby forfeited any claim they had for their wages and effects.

THIRD: The British Steamship *Westmeath* left her berth on Sunday morning, December 19, 1915, at Port Pirie, Australia, and proceeded out into the harbor before starting on her voyage. After the vessel had left, the captain found that two firemen had deserted. The other firemen on the ship refused to work unless substitutes were obtained in place of the deserters. The master secured a tugboat, went back to port and procured two substitutes. One of these two men was Lucas, one of the respondents herein, who returned with the captain to the vessel and at once signed the articles.

The ship's articles, which were signed by both the libelants, were opened at Liverpool on August 4, 1915, and bound the men to serve for a voyage not exceeding one year's duration to any ports or places within the limits between 75° North, 60° South Latitude commencing at Liverpool, thence to Australia, New Zealand and/or United Kingdom ports and/or any other ports within the above limits in any rotation to end at any such port in the United Kingdom or Continent of Europe within home trade limits as might be required by the master.

These articles were read to Lucas before he signed them and the chief engineer witnessed his signature.

The Libelant-respondent Blixt signed on the articles at Sydney, Australia, on December 8th before a Government Shipping Officer. He admitted he was regularly signed on and that he understood the articles which he signed.

From New Zealand the vessel with the libelants-respondents aboard proceeded to America, first going to Boston, then Baltimore and lastly New York, where she arrived on April 3rd, 1916. At all these ports the respondents repeatedly asked for their discharge, agreeing to take less than the full amount of wages in consideration of obtaining their discharge.

On or before April 10, 1916, the respondents without permission left the ship and did not return, although the time for which they had contracted to serve had not expired.

FOURTH: The District Court entered a decree for the libelants. As to the application of the Seamen's Act, the District Judge said in his opinion:

> "It would appear that the provisions of the the law apply to the vessel and that the United States Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress has now passed a law which gives a United States Statute an effect over British subjects which is not covered by the British law and which must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain."

FIFTH: The Circuit Court of Appeals affirmed the Decree of the District Court. The Court in its opinion did not make any mention or discuss the petitioner's contention that Section 4530 of the Seamen's Act should not be construed to apply to foreign seamen shipping on foreign vessels at a foreign port under an agreement valid where made and not to be performed within the United States.

The Court in its opinion held that the act as applied to such a case as this is constitutional on the authority of *Patterson* vs. *the Eudora*, 190 U. S. 169, and on the ground that the act is a regulation of commerce.

REASONS FOR ALLOWANCE OF WRIT.

1. In this case the respondents entered into a contract before the Seamen's Act became effective as to British vessels, which contract was valid under both British and American law and was made between British subjects to be performed on a British ship for a term not exceeding one year.

If Section 4530 of the Seamen's Act be given extra territorial jurisdiction and made applicable to this case, it would vitiate the valid contract lawfully entered into between the subjects of Great Britain in the territory of Great Britain and not to be performed within the United States.

The only ground on which such a law could be made applicable to such a case as this, would be on the theory that Congress can prescribe conditions affecting the entry of foreign vessels into our ports. This act does nothing of the sort and this Court has so held.

2. If Section 4530 of the Revised Statutes be so construed as to be made applicable to such a case as this, the act would be unconstitutional because

a. The above mentioned section deprives the petitioner of his liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.

b. If in a case such as this where there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage, this section is applicable and if under it and pursuant to its terms foreign vessels are forced and made liable to pay money or wages in violation of the provisions of such valid contract, it would amount to the taking of property from them without due process of law.

This act does not merely impair the obligation or take away the remedy for the enforcement of a contract, but creates a liability on the ship owner in direct contravention to the terms of a legal and valid contract.

2. The questions involved in this case have been frequently before the Federal and State Courts in a very large number of cases since the passage of the act and the various courts have construed the act differently in many respects.

3. The Circuit Court of Appeals for the Fifth Circuit in the case of *Dillon* v. *Strathearn S. S. Co.*, 248 U. S. 182, certified to this Honorable Court the questions herein involved.

On December 23, 1918, this Honorable Court decided that the case did not comply with the rules of the court and dismissed the certificate.

This Honorable Court granted the petition for certiorari in the case of the *Sandberg* v. *McDonald, The Talus,* 248 U. S. 185; *Nielsen* v. *Rhine, Hardy* v. *Barkentine Windrush,* 248 U. S. 205, which cases involved the construction and application of Section 4529 of the U. S. Revised Statutes, and held in those cases that the prohibition against advances to seamen contained in that section of the Act was not applicable and did not prohibit advances made to foreign seamen on either an American or foreign vessel in a foreign port.

It is of great importance that the questions involved in this case, i. e., the construction, application and constitutionality of §4530 of the Revised Statutes should be adjudicated by this Honorable Court.

WHEREFORE, claimant, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to the Supreme Court for its review and determination, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in the said Circuit Court of Appeals in the said case entitled "Peter Lucas and Gustav Blixt, Libelants-Appellees, against Steamship *Westmeath,* her engines, etc., J. M. Thompson, Claimant-Appellant," pursuant to Section 240 of the Judicial Code, and that the said decree of the said Circuit Court of Appeals in the said case may be reversed by this Honorable Court, and that your petitioner may have such other or further relief or remedy

in the premises as to this Honorable Court may seem meet and in conformity with the said Act.

And your petitioner will ever pray.

L. deGrove Potter,
Counsel for Petitioner.

Kirlin, Woolsey & Hickox,
Proctors for Petitioner,
27 William Street,
New York City.

State of New York,
County of New York, } ss.:

L. deGrove Potter, being duly sworn, says: That he is one of the proctors for the petitioner herein, and that the foregoing petition is true to the best of his knowledge, information and belief.

L. deGrove Potter.

Sworn to before me this
17th day of May, 1919.

William C. Goddard,
Notary Public.

I hereby certify that I have examined the foregoing petition, that in my opinion it is well founded, and entitled to the favorable consideration of the Court, and that it is not filed for purposes of delay.

L. deGrove Potter,
Counsel.

SUPREME COURT OF THE UNITED STATES,

J. M. THOMPSON, Master and Claimant of the Steamship WESTMEATH, her engines, etc.,
Claimant-petitioner,

against

PETER LUCAS AND GUSTAV BLIXT,
Libelants-respondents.

BRIEF IN SUPPORT OF PETITION.

STATEMENT.

This is an application for a writ of certiorari under and pursuant to Section 240 of the Judicial Code for a review of the decision and decree of the United States Circuit Court of Appeals for the Second Circuit, affirming the decree of the United States District Court for the Eastern District of New York.

The material facts and the questions involved are set forth in the foregoing petition.

Section 4530 of the Revised Statutes, as amended, Act Dec. 21, 1898, C. 28, Sec. 5, and Act March 4, 1915, c. 153, Sec. 4, being part of the so-called Seamen's Act, is as follows:

> "§4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-

half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided,* Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended, every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further,* that notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

POINT I.

IT WAS NOT THE INTENTION OF CONGRESS TO ABROGATE THE CONTRACT OF A FOREIGN SEAMAN ENTERED INTO WITH A FOREIGN SHIP OUTSIDE THE JURISDICTION OF THE UNITED STATES.

A. It is a general rule of law that a contract good where made is good everywhere. *Scudder* v. *Chicago Union National Bank,* 91 U. S. 406.

Statutes cannot be made applicable in such a way as to nullify contracts made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States, as was decided in the case of *The Appollon,* 9 Wheat. 362, on page 370, where Mr. Justice Story said, "The laws of no nation can justly extend beyond its own territory except so far as regards its own citizens."

The law of nations is a part of the law of the land and should be followed by the courts of the United States. *The Amelia,* 1 Cranch. 1; *The Charming Betsey,* 2 Cranch. 64, 118; *Holmes* v. *Jennison,* 14 Pet. 540, 569.

This Court, in the recent case of *Sandberg et al.* v. *McDonald, steamship Tallas,* 248 U. S., 185, in construing §11 of this same Act, which prohibits advances in wages to seamen, and a sub-division on which reads:

> "This section shall apply as well to foreign vessels while in the waters of the United States as to vessels of the United States,"

said at page 195:

> "Did Congress intend to make invalid the contracts of foreign seamen so far as advance payments of wages is concerned, when the contract and payment was made in a foreign country where the law sanctioned such contract and payment?"
>
> "Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. *Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States.*" (Italics ours.)

The provisions of §4530 can be allowed ample operation when confined to contracts of seamen on foreign vessels only when such contracts are made while the vessel is in the harbors of the United States and then only to contracts of American seamen.

It is here conceded that the contracts were entered into outside the jurisdiction of the United States, before the act by its terms became effective as to British vessels, and by the terms of the contract no wages were due or to be paid these seamen until the voyage was completed.

In the absence of a clear declaration by Congress of its purpose specifically to annul valid foreign contracts, this Court should not violate the well settled principle

of international comity, which requires it to abstain from interfering with the internal discipline of a foreign ship and the general regulation of the rights and duties of the officers and crew among themselves. *Wildenhus's*, 120 U. S. 1; *Liverpool Co.* v. *Phoenix Ins. Co.*, 129 U. S. 397; *The Belgenland*, 114 U. S. 355; *The Scotland*, 105 U. S. 24.

In the *Wildenhus* case, 120 U. S. 1, the Supreme Court, considered the question of whether the local authorities had jurisdiction over a crime committed on a Belgian merchant vessel in a port in the United States. Mr. Chief Justice Waite in his opinion of page 12, says as follows:

> "From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemp-

> tion from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which was to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions."

B. §4530 does not apply specifically to foreign seamen on foreign vessels. The pertinent part of the statute reads:

> "This section shall apply to seamen on foreign vessels while in the harbors of the United States."

This might well be construed to mean American seamen on foreign vessels.

The title or preamble of the Seamen's Act is as follows:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Neither in the Act nor in this title does the Act expressly apply to foreign seamen. It is quite evident it was not the intention of Congress to pass an act for the welfare of foreign seamen, and this Act should not be construed so as to apply to foreign seamen on foreign

vessels temporarily in a harbor of the United States, where such application would conflict with their contractual and statutory obligations.

Under the well-known rules of construction the title of an act or statute may be considered in construing the act or attempting to determine the intent of the Legislature which passed the act. See *Holy Trinity Church* v. *U. S.*, 145 U. S., 457, 462; also *United States* v. *Palmer*, 3 Wheat., 610, 631, in which Chief Justice Marshall said:

> "The words of the Section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them. The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature."

The great fundamental rule of construing statutes is to ascertain and give effect to the intention of the Legislature, *Schulthis* v. *McDougal*, 162 Fed. 331, and where the statute has a doubtful meaning, or where adhering to the strict letter would lead to injustice or contradictory provisions, the duty devolves upon the court to ascertain the true meaning. If the intention of the Legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction consistent with the general principles of law. 36 Cyc. 1107. Every statute should be construed in reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion and necessity of its enactment.

Considering the defects or evils of the former law and the remedy provided by the new one, the statute should be given that construction which is best calculated to advance its object by suppressing the mischief and securing the benefits intended, and where the proper construction of a statute is doubtful, the question of inconvenience, injustice or prejudice resulting from the proposed construction may be considered. *Knowlton* v. *Moore*, 178 U. S. 41; *Chinese Laborers*, 13 Fed. 291.

In several cases the courts have considered the preamble and recitals for the purpose of ascertaining the Legislature's intent. *Furman* v. *N. Y.* Sandf. 16; *Price* v. *Forrest*, 173 West, 410; *Holbrook* v. *Holbrook*, 1 Pick. 248; *U. S.* v. *Webster*, 16 Fed. Cas. 658, 36 Cyc. 1132.

It is the duty of the courts so far as practicable to reconcile the different provisions so as to make them consistent and harmonious. *Morris* v. *R. R.*, 37 New Jersey Law, 229; *Manuel* v. *Manuel*, 13 Ohio State, 458; *Ogden* v. *Strong*, 18 Fed. Cas., 10,460.

If Congress had intended that this Section should apply to foreign seamen on foreign vessels, it seems clear that it would expressly have provided in the Act that it should be applicable. This Section and all the sections of the Act deal with American seamen and make provision for their benefit and safety and if it were intended to make one of the sections of this Act apply to foreign seamen in derogation of their contracts of employment valid where made, it seems clear that the Act would haxe expressly so stated.

As this Statute is in derogation of the common law, it should be construed strictly. *National Securities Co.* v. *United States*, 193 U. S. 197, 361; *Cope* v. *Cope*, 137 U. S.

682, 685; *Fourth National Bank* v. *Francklyn*, 120 U. S. 747, 753; *Shaw* v. *Railroad Company*, 101 U. S. 557, 565; *Meister* v. *Moore*, 96 U. S. 76, 79; *Ransom* v. *Williams*, 69 U. S. 313, 318. In the last-named case the Court said:

> "The statute is in contravention of the common law, and hence to be construed strictly."

In *Shaw* v. *Railroad*, the Court said:

> "No statute is to be construed as altering the common law, farther than its words impart. It is not to be construed as making any innovation upon the common law which it does not fairly express."

This Statute is penal and it should be construed strictly for that reason. This has been held in the case of The *Talus* the *Windrush* and the *Rhine*, 248 U. S., recently decided by this Court.

C. §4530 if applicable to contracts with foreign seamen on foreign vessels entered into outside the jurisdiction of the United States is limited to wages earned by such seamen *in an American port* and not to wages earned outside the jurisdiction of the United States.

In the case of *Clyma* v. *S. S. Ixion*, 237 Fed. 142, decided on July 15, 1916, by Judge Neterer of the United States District Court for the District of Washington, it was held on exceptions to the libel, in an action brought by a British subject under §4530 of the Seamen's Act against a British vessel, that the Act was only applicable to wages earned in an American port by a foreign seaman on a foreign vessel.

It is a fair inference from this decision that the Act would not apply to other wages earned outside the American jurisdiction.

POINT II.

IF THE SEAMEN'S ACT BE SO CONSTRUED AS TO APPLY TO THE CASE AT BAR, §4530 WOULD BE UNCONSTITUTIONAL AND A VIOLATION OF THE CONSTITUTION OF THE UNITED STATES.

A. §4530 of the Seamen's Act deprives the defendant of its liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.

By virtue of the Commerce Clause, Congress is empowered to legislate with respect to such matters affecting interstate and foreign commerce as regulation of seamen's contracts of service, but in the exercise of this constitutional power Congress must not in general violate other prohibitions of the Constitution, such as the Fifth Amendment.

It appears to be well settled that the interference with the liberty to contract on such terms as may be advisable to the parties to the contract is a deprivation of liberty, without due process of law. See *Allgeyer* v. *Louisiana*, 165 U. S., 578.

In that case the prohibition in the State of Louisiana of a person making a contract outside the State of Louisiana under certain circumstances was held to deprive such person of the right to contract which was guaranteed to him by the Fourteenth Amendment.

The Court said, at page 589:

> "The liberty mentioned in that amendment (14th Amendment) means not only the right of the citizen to be free from the mere physical re-

straint of his person as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

It is well settled that the phrases in the Fourteenth and Fifth Amendments are construed in the same manner, the Fifth Amendment restricting the Federal legislation and the Fourteenth Amendment restricting the States' legislation in the matter.

It is true that in derogation of the Fifth Amendment Congress may legislate in such a manner as to deprive persons of the liberty of entering into certain contracts, but the justification for such legislation has always been motives of policy based on the exercise of police power. Thus the lottery contract is forbidden to persons. See also *Patterson* v. *Bark Eudora*, 190 U. S., 169.

In that case the Court passed an act prohibiting the payment of seamen's wages in advance. The seamen in question were paid in advance and later libeled the owners for the full wages without deduction of the advance. A decree was entered for the full amount in their favor. The Supreme Court held that although this congressional prohibition was in derogation of the rights guaranteed to persons under the Fifth Amendment, still it was proper under the guise of the exercise of the police

power. The Court, at page 175, went fully into the consideration of the wrongs which are likely to happen to seamen as a class when they are paid in advance:

> "The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

In order to justify any legislation under the police power it must appear plainly that the legislation has a tendency to rectify the conditions which the legislative body has thought needful of remedying. The Courts will look through the form of any legislative enactment and get at the substance of the matter. In *Booth* v. *Illinois*, 184 U. S., 425, at page 429, the Court said:

> "If, looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that

> certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Mugler* v. *Kansas*, 123 U. S., 623, 661; *Minnesota* v. *Barber*, 136 U. S., 313, 320; *Brimmer* v. *Rebman*, 138 U. S., 78; *Voight* v. *Wright*, 141 U. S. 62."

The contract is valid here as well as where made and is not in any sense contrary to public policy. This Act even if applicable to a contract entered into before the act became effective does not make the contract unlawful but abrogates or at least impairs its obligations.

It is submitted that Section 4530 does not even attempt to legislate to the benefit of the seaman. It goes directly contrary to the policy of the early act of 1898, which was held constitutional in *Patterson* v. *Bark Eudora, supra.* Under this section the seaman is in no way protected from his traditional traits of throwing away his hard-earned wages in loose living and dissipation in the ports to which his vessel takes him. The right to demand and obtain half of his wages is a temptation to him to go ashore and squander it, and furthermore, during the course of his dissipation also, he is very apt to desert the ship, and in consequence thereof lose half of his wages.

We therefore submit that section 4530 undoubtedly contravenes the Fifth Amendment and cannot be justified as an exercise of police power.

B. *Although the Federal Legislature is not prohibited from passing laws impairing the obligation of contracts, it cannot deprive a person of property without due process of law.*

In the case of *Hepburn* v. *Griswold*, 8 Wall., 603, the chief justice, in stating the rule on the subject, said on page 623:

> "It is true that this prohibition is not applied in terms to the government of the United States. Congress has express power to enact bankrupt laws, and we do not say that a law made in the execution of any other express power, which, incidentally only, impairs the obligation of a contract, can be held to be unconstitutional for that reason.
>
> But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impair the obligation of contracts, is inconsistent with the spirit of the Constitution."

In *McCracken* v. *Hayward*, 2 Howard, 608, Justice Bradley said on page 612:

"In placing the obligation of contracts under the protection of the constitution, its framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it was to be carried into execution; annulling all state legislation which impaired the obligation, it was left to the States to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

In the *Sinking Fund Cases*, 99 U. S., 700, on page 718, the Court observed

"That the United States are not included within the constitutional prohibition, which pre-

vents states from passing acts impairing the obligation of contracts, but equally with the states, they are prohibited from depriving persons or corporations of property without due process of law."

See Cooley's Constitutional Limitations, 7th Edition, 507, where he lays down the rule or principle known to our system under which private property cannot be taken from one person and transferred to another for the private use and benefit of such other person whether by general law or by special enactment.

In the present case there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage. This contract was made before the act went into effect as to foreign vessels. If the Seamen's Act be applicable and under it the owners of vessels are forced and made liable to pay money or wages in violation of the provisions of a contract, it would amount to the taking of property from them without due process of law.

In this instance, if this Act be applicable to the case at bar,, Congress did not merely pass a law impairing obligation of contract which it has a right to do to the extent of taking away the remedy for the enforcement of a contract, but created a liability on the shipowner in direct contravention of the terms and provisions of a legal binding contract and therefore violated the constitution by taking property without due process of law.

If this may be done, there would not be anything to prevent Congress from passing a law providing for the imposition of a fine or penalty on a foreign vessel for an act done wholly within the foreign jurisdiction to be

enforced when the vessel later came within a harbor of the United States.

May 17, 1919.

L. DE GROVE POTTER,
JOHN M. WOOLSEY,
Counsel.

KIRLIN, WOOLSEY & HICKOX,
Proctors for Petitioners.